IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 35907 of 2003(Y)

PETITIONERS:
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1. **B.K.SHEELAKUMARI, PEON, MAIN OFFICE, THIRUVANANTHAPURAM MUNICIPAL CORPORATION, THIRUVANANTHAPURAM.**

2. **R.PADMINI, PEON,THIRUVANANTHAPURAM MUNICIPAL CORPORATION, ZONAL OFFICE, THIRUVALLAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.KRB.KAIMAL
SRI.B.UNNIKRISHNA KAIMAL

RESPONDENTS:
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1. **STATE OF KERALA REP. BY THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF URBAN AFFAIRS, THIRUVANANTHAPURAM.**

3. **THE SECRETARY, TRHIRUVANANTHAPURAM MUNICIPAL CORPORATION, THIRUVANANTHAPURAM.**

BY ADV. SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.
BY GOVERNMENT PLEADER SRI. P. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007 ALONG WITH WPC NO. 36105 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.35907/2003 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE GOVT.ORDER G.O.(P) 7/95/P&ARD DTD. 30/03/1995.**

EXT.P2: **COPY OF THE ORDER NO.G.O.(MS) 156/99/LSGD DTD. 10/08/1999 ISSUED BY THE 1ST RESPONDENT.**

EXT.P3: **COPY OF THE ORDER NO.G.O.(MS) 127/99/LSGD DTD. 3/07/1999 ISSUED BY THE 1ST RESPONDENT.**

EXT.P4: **COPY OF THE ORDER NO.GE.1-44413/97 DTD. 29/10/2001 ISSUED BY THE 3RD RESPONDENT.**

EXT.P5: **COPY OF THE ORDER NO.GE.1-44413/97 DTD. 3/11/2001 ISSUED BY THE 3RD RESPONDENT.**

EXT.P6: **COPY OF THE ORDER NO.GE.1-51610/96 DTD. 3/11/2003 ISSUED BY THE 3RD RESPONDENT.**

RESPONDENT'S ANNEXURES:

ANNEXURE I: **COPY OF THE SENIORITY LIST DTD. 2/01/2004 ISSUED BY THE SECRETARY, THIRUVANANTHAPURAM CORPORATION, THIRUVANANTHAPURAM.**

ANNEXURE II: **COPY OF THE LETTER NO.B5-301/2002 DTD. 2/08/2003 ISSUED BY THE DIRECTOR, URBAN AFFAIRS, CORPORATION OF THIRUVANANTHAPURAM TO THE SECRETARY, THIRUVANANTHAPURAM.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C) NOS. 35907 & 36105/2003

JUDGMENT

W.P.(C) No.35907/2003:

The petitioners were appointed as Peons in Thiruvananthapuram Municipal Corporation, under the dying-in-harness scheme. The Government by Exts.P2 and P3 orders, accepted their claim for appointment and gave sanction for appointing them in the Last Grade Posts in Thiruvananthapuram Corporation or in any Municipalities in Thiruvananthapuram district. It was also stipulated that according to the availability of vacancies, they shall be appointed at the earliest. Pursuant to Exts.P2 and P3 orders, the Director of Municipal Administration issued directions to the Secretary, Thiruvananthapuram Corporation to appoint the petitioners and based on the said directions, the petitioners along with others were appointed as Peons, by the Secretary, Thiruvananthapuram Corporation, by Exts.P4 and P5 orders. Later, the Secretary issued Ext.P6 order, appointing them as Contingent Employees under the Corporation with effect from 20.10.01 and 3.11.2001 respectively. The reason given for passing Ext.P6 order is that there were others waiting in the queue for

appointment as Last Grade Servants under the Corporation, under the dying-in-harness scheme. For want of vacancies, they were working as Contingent Employees. Only after accommodating them in the post of Peon, the petitioners could be appointed. This writ petition was filed, challenging Ext.P6 on several grounds, including violation of the principles of natural justice.

2. The Corporation has filed a statement, reiterating the stand taken by it in Ext.P6. It has also produced Annexure-I list of employees waiting in the queue, to be appointed under the dying-in-harness scheme, as Peons. In the said list, the petitioners are serial numbers 12 and 13. At the relevant time after reverting the petitioners and another, serial numbers 3 to 5 were appointed in their place. That means, serial numbers 6 to 11 are seniors in the said list, who must be accommodated first before appointing the petitioners as Peons. The petitioners have filed a reply affidavit to the statement of the Corporation.

3. Heard the learned counsel on both sides. Going by the facts disclosed, whatever be the technical flaw in Ext.P6, justice has been rendered by posting those persons who were waiting in the queue, for being absorbed as Last Grade Servants. For want of vacancies, they were working as Contingent Employees. But, the learned counsel for the petitioners

points out that the statement was filed in May, 2004. Now several vacancies might have arisen and there may be sufficient number of vacancies to accommodate the petitioners also, after accommodating their seniors in Annexure-I list.

4. Having regard to the facts disclosed, I find nothing illegal with Ext.P6. The petitioners have to wait for their turn for appointment as Peons. The petitioners need be posted as Contingent Employees, if only there are no vacancies to accommodate them also, after accommodating their seniors in Annexure-I list. In case there are no vacancies in the post of Peon, the petitioners may either wait for the vacancies to arise or they may work as Contingent Employees, in view of the posting given to them as per Ext.P6 to that post. It is clarified that even if they do not work as Contingent Employees, they shall be appointed as Peon according to their turn in Annexure-I list. In other words, they shall not be denied employment, on the ground that they did not work as Contingent Employees. Since the petitioners continued to work as Peon pursuant to the interim order of this Court, there shall not be any recovery of the salary already paid to them.

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5. The case of the petitioner herein is identical to the case of the petitioners in the above writ petition. The petitioner herein is rank No.23 in

Annexure-I list. It is ordered that the directions issued in the above case will govern the petitioner herein also.

The Writ Petitions are disposed of as above.

29th May, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/